

Schena, Cristeen

Sent: Tuesday, November 04, 2014 6:03 PM
To: Perkins, Stephen
Cc: Hamjian, Lynne; Hunter, Johanna; Voorhees, Jeanne; Winnett, Steven; Perkins, Eric
Subject: RE: Tile drain case info

I don't think this water qualifies as "irrigated return flows," but perhaps some court has concluded otherwise. And tile drains are pretty clearly point sources, not nonpoint sources. And it's not stormwater. So....

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From: Perkins, Stephen

Sent: Tuesday, November 04, 2014 12:17 PM

To: Williams, Ann

Cc: Hamjian, Lynne; Hunter, Johanna; Voorhees, Jeanne; Winnett, Steven; Perkins, Eric

Subject: Tile drain case info

Ann and other interested folks

Here's what I've gathered re tile drainage.

"The [USEPA] Administrator shall not require a permit under this section for discharges composed entirely of return flows from irrigated agriculture, nor shall the Administrator directly or indirectly, require any State to require such a permit." (33 U.S.C. §1342(l)(1) (emphasis added);

see also 40 C.F.R. §122.3(e) and (f).)

(e) Any introduction of pollutants from non point-source agricultural and silvicultural activities, including storm water runoff from orchards, cultivated crops, pastures, range lands, and forest lands, but not discharges from concentrated animal feeding operations as defined in § [122.23](#), discharges from concentrated aquatic animal production facilities as defined in § [122.24](#), discharges to aquaculture projects as defined in § [122.25](#), and discharges from silvicultural point sources as defined in § [122.27](#).

(f) Return flows from irrigated agriculture.

The case I found, PCFFA v Glazer, is at this link: <http://ofwlaw.files.wordpress.com/2013/10/pcfpa-v-glaser.pdf>

Web article re case on Association of California Water Agencies

<http://www.acwa.com/news/water-news/report-agricultural-tile-drains-exempt-clean-water-act-permits-court-says>

The proposed "interpretive rule" accompanying the Waters of the US reg specifically says:

The proposed rule will NOT:

- Cover groundwater
- Cover tiles drains